

# Review of Coastal Ferry Act

## *Commissioner's Discussion Paper #9*

The BC Ferry Commission (“the commissioner”) has been mandated under Bill 14 to conduct a review of the Coastal Ferry Act (the “Act”) and to make recommendations to the Minister of Transportation and Infrastructure on potential changes which would better enable the commissioner to balance the financial sustainability of the ferry operator and the interests of users. The commissioner is conducting public consultation meetings in coastal communities served by BC Ferries and is inviting additional input via written submissions or comments on a number of key issues.

This is the ninth of a series of discussion papers to be published on key issues to be considered by the commissioner during his review. Previous discussion papers have dealt separately with interests of ferry users, financial sustainability objectives, the balance between the two, price regulation and cross-subsidization issues as they apply to the BC ferry system, alternative service providers and cost efficiency. This paper deals with the issue of unfair competitive advantage.

In 2010, amendments to the Act require that if a ferry operator is providing a competitive service, the commissioner must determine whether the operator is pricing the service below direct costs and an appropriate proportion of indirect costs associated with providing that service, or has an unfair competitive advantage. An unfair competitive advantage includes, without limitation, an advantage resulting from the ferry operator having been provided with:

- use of, or access to vessels or terminals previously owned by government;
- any tax exemption; or
- any subsidy.

In the spring of 2010, BC Ferries introduced a drop trailer service on its major routes. The drop trailer service offered by BC Ferries provides the corporation with an additional source of revenue and improves utilization of its vessels and terminals.

Later that year, the commissioner made a determination that BC Ferries’ drop trailer service was a competitive service as defined in the Act. In 2011, the commissioner published its findings and issued Order 11-01 governing the regulation of BC Ferries’ competitive drop trailer service. In regulating a competitive service, the commissioner can either make an order for an alternate service provider to provide the service under a franchise agreement or otherwise, or make an order for a minimum tariff that covers all direct and indirect costs associated with the service. After an extensive cost analysis, the commissioner set a minimum tariff for the drop trailer service offered by BC Ferries.

The probe involved the assistance of an external cost consultant and required a lengthy and costly administrative review process that included the commissioner seeking submissions from industry and the public. Adherence to the minimum tariff is also subject to regular compliance reviews and as a result adds costs to the regulatory system.

The administrative process dealing with unfair competitive advantage is under review by the commissioner. The commissioner is interested in obtaining public feedback on the following:

- Are provisions in the Act covering unfair competitive advantage appropriate or should such issues be dealt with in some other manner?
- Should the commissioner have more discretion in determining what constitutes an unfair competitive advantage? What improvements are possible with the current administrative review process?
- Should additional tools be available to the commissioner such as imposing a mediation process to determine if the parties can come to an agreement?

Comments can be submitted by email to [info@bcferrycommission.com](mailto:info@bcferrycommission.com) or by mail to BC Ferry Commission, RPO Box Hillside, Box 35119, Victoria BC, V8T 5G2. Deadline for submissions or comments is Monday, December 5, 2011.